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SENATE BILL 8020 By
Crutchfield

HOUSE BILL 12 of the Second Extraordinary Session
By Stulce

AN ACT to amend Tennessee Code Annotated, Title 67.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. (a) Tennessee Code Annotated, Title 67, Chapter 6, Part 3, is amended by deleting in their entirety all sections in such part except for Sections 67-6-308, 67-6-337, 67-6-338 and 67-6-375 through 67-6-383.

(b) Tennessee Code Annotated, Title 67, Chapter 6, Part 3, is amended by adding the following new section:

Section 67-6-384. There is exempt from the tax levied by this chapter any sale or use which would otherwise be taxable pursuant to the provisions of this chapter but which would impose a tax that is invalid either under the commerce clause or the due process clause of the Constitution of the United States.

SECTION 2. Tennessee Code Annotated, Section 67-6-102(2), is amended by deleting the language ",including, but not limited to, the Girl Scouts or county fairs".

SECTION 3. Tennessee Code Annotated, Section 67-6-102(9), is amended by deleting from the first sentence the language "the retail price of which, for any such single article, exceeds two hundred fifty dollars (\$250),"; by deleting from the fourth sentence the language ", the retail price of which exceeds two hundred fifty dollars (\$250)"; and by deleting from the fifth sentence the language ", even if the amount of the lease or rental is less than two hundred fifty dollars (\$250)".

SECTION 4. Tennessee Code Annotated, Section 67-6-102(13)(B), is amended by deleting the language ", the cost of which, for any such single article, exceeds one thousand dollars (\$1,000),".

SECTION 5. Tennessee Code Annotated, Section 67-6-102(24)(D), is amended by deleting the language "and each sale is in excess of five hundred dollars (\$500)" and the language "for sales in excess of five hundred dollars (\$500)".

SECTION 6. Tennessee Code Annotated, Section 67-6-102(24)(F), is amended by adding the following subdivisions:

(x) The performing or furnishing for a consideration of any of the following types of services:

- (a) advertising services;
- (b) credit reporting and debt collection services;
- (c) mailing, photocopying, artistic, and stenographic services;
- (d) building management services;
- (e) personnel supply services;
- (f) computer and data processing services;
- (g) management consulting and public relations services;
- (h) detective and protective services;
- (i) research and testing services;
- (j) motion picture production services;
- (k) other business services;
- (l) coin-operated laundry services;
- (m) beautician and barber shop services and other personal services;
- (n) funeral services;
- (o) veterinary services provided for a pet; for purposes of this section, "pet" means any domesticated animal normally maintained in or near the

household of its owner, except for any livestock as defined in Section 44-11-101 and any wildlife as classified and defined in Section 70-4-403;

- (p) landscaping services;
- (q) securities brokerage services;
- (r) insurance agency services;
- (s) real estate agency services;
- (t) membership or privileges in a select membership organization;
- (u) amusement services;
- (v) advertising services in newspapers, magazines and other periodical publications;
- (w) legal services;
- (x) engineering, architectural and surveying services;
- (y) accounting, financial, auditing and bookkeeping services;
- (z) for-profit educational services;
- (aa) not-for-profit educational services;
- (bb) for-profit social services;
- (cc) not-for-profit social services;
- (dd) medical services;
- (ee) dental services;
- (ff) nursing and personal care facility services;
- (gg) not-for-profit hospital and health services;
- (hh) for-profit hospital and health services;
- (ii) contractor and operative builder services;
- (jj) heavy construction services;
- (kk) special trade contractor services;
- (ll) transportation services;

SECTION 7. Tennessee Code Annotated, Section 67-6-102(24)(F), is amended by deleting subdivision (v) in its entirety and substituting instead the following:

(v) The laundering or dry cleaning of any kind of tangible personal property, excluding coin-operated laundry, dry cleaning or car wash facilities, where a charge is made therefor;

SECTION 8. Tennessee Code Annotated, Section 67-6-204(b), is amended by deleting the first sentence and substituting instead the following language:

If the owner of the property maintains continuous supervision over the personal property being leased or rented, and furnishes an operator or crew to operate such property, the owner is rendering a service, and the same shall be subject to the sales tax levied pursuant to § 67-6-205(c)(1).

and by deleting the third sentence and substituting instead the following language:

If the owner of the property furnishes flight training, the owner is rendering a service, and the same shall be subject to the sales tax levied pursuant to § 67-6-205(c)(1).

SECTION 9. Tennessee Code Annotated, Section 67-6-205, is amended by inserting the following as a new subsection (c):

(c)(1) Notwithstanding any other provision of law to the contrary, except for Section 67-6-384, for the services listed in Section 67-6-102(24)(F)(x), a tax shall be levied at the rate of one percent (1%) of the retail sales price for such services.

(2) The tax imposed by this subsection is a state tax for state purposes only and no county or municipality or taxing district shall have power to levy any like tax.

SECTION 10. Tennessee Code Annotated, Section 67-6-206, is amended by deleting the section in its entirety.

SECTION 11. Tennessee Code Annotated, Section 67-6-207, is amended by deleting the section in its entirety.

SECTION 12. Tennessee Code Annotated, Section 67-6-209(a), is amended by placing a period after the words "deductions whatsoever" and by deleting the remainder of the sentence.

SECTION 13. Tennessee Code Annotated, Section 67-6-209(b), is amended by deleting the language "except where the title holder is a church, private nonprofit college or university and the tangible personal property is for church, private nonprofit college or university construction," and by deleting the last two sentences of the subsection in their entirety.

SECTION 14. Tennessee Code Annotated, Section 67-6-209, is further amended by deleting subsections (d), (e), (f) and (g) in their entirety.

SECTION 15. Tennessee Code Annotated, Section 67-6-216, is amended by deleting the section in its entirety.

SECTION 16. Tennessee Code Annotated, Section 67-6-217, is amended by deleting the section in its entirety.

SECTION 17. Tennessee Code Annotated, Section 67-6-218, is amended by deleting the section in its entirety.

SECTION 18. Tennessee Code Annotated, Section 67-6-219, is amended by deleting the section in its entirety.

SECTION 19. Tennessee Code Annotated, Section 67-6-221, is amended by deleting the section in its entirety.

SECTION 20. Tennessee Code Annotated, Section 67-6-224, is amended by deleting the section in its entirety.

SECTION 21. Tennessee Code Annotated, Section 67-6-225, is amended by deleting the section in its entirety.

SECTION 22. Tennessee Code Annotated, Section 67-6-226, is amended by inserting the punctuation "." immediately after the first occurrence of the language "offered for public consumption" and by deleting the remaining language in the section in its entirety.

SECTION 23. Tennessee Code Annotated, Title 67, Chapter 6, Part 2, is amended by adding the following as a new section:

Section _____. (a) Notwithstanding any other provision of law to the contrary, except for Section 67-6-384, there is levied a tax at the rate of one percent (1%) of the gross charge for each of the following types of goods or services:

(1) Seeds, seedlings, plants grown from seed and liners (cuttings) which will produce food or fiber (including tobacco) for human or animal consumption;

(2) Fertilizer to be used to aid in the growth and development of seeds, seedlings or plants as defined in subdivision (1);

(3) Pesticides which are sold for the purpose of aiding in the production of food or fiber (including tobacco) for human or animal consumption. As used in this section, "pesticide" means any substance or mixture of substances or chemicals intended for defoliating or desiccating plants or for preventing, destroying, repelling or mitigating any insects, rodents, fungi, bacteria or weeds, including, but not limited to, insecticides, fungicides, bactericides, herbicides, desiccants, defoliant, plant regulators and nematocides;

(4) Containers for farm products and plastic or canvas used in the care and raising of plants, seeds or seedlings, as defined in subdivision (1), and plastic or canvas used in covering feed bins, silos and other similar storage structures;

(5) Livestock and poultry feeds, livestock wormers, livestock medication and instruments used for the administration of such medications;

(6) Any natural or artificial substance used in the reproduction of livestock, including semen or embryos;

(7) Adjuvants and surfactants solutions sold exclusively for the purpose of mixture with insecticides, pesticides, fungicides or herbicides or for use as a soil conditioner when such is intended to aid in the growth and development of food or fiber (including tobacco) for human or animal consumption;

(8) Agri-sawdust;

(9) Caskets and burial vaults used in the burial of the dead, up to or not to exceed five hundred dollars (\$500);

(10) Periodicals printed entirely on newsprint or bond paper and regularly distributed twice monthly, or on a biweekly or more frequent basis;

(11) Fishing tournament registration fees collected from tournament participants;

(12) Taxidermy services; and

(13) Gas, electricity, fuel oil, coal and other energy fuels sold directly to the consumer for residential use. As used in this section, "sold directly to the consumer for residential use" includes the furnishing of gas, electricity, fuel oil, coal or other energy fuels to single private residences, including the separate private units of apartment houses and other multiple dwellings, actually used for residential purposes, which are separately metered or measured, regardless of the fact that a person other than the resident is contractually bound to the supplier for the charges, actually pays the charges or is billed for the charges. Use of electricity and other energy fuels in hotel or motel units by transient occupants does not constitute residential use.

(b) The tax imposed by this section is a state tax for state purposes only and no county or municipality or taxing district shall have power to levy any like tax.

SECTION 24. Tennessee Code Annotated, Section 67-6-509, is amended by deleting the section in its entirety.

SECTION 25. Tennessee Code Annotated, Section 67-4-2004, is amended by adding the following as appropriately designated items:

() "Disqualified person" has the meaning set forth in section 4946(a) of the internal revenue code;

() "Private foundation" has the meaning set forth in section 509(a) of the internal revenue code;

() "Professional person" means any of the following individuals who are licensed or registered under the applicable laws of this state or any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico or any territory or possession of the United States or the applicable laws of any foreign country:

- (A) A lobbyist;
- (B) An investment advisor;
- (C) An accountant;
- (D) An architect;
- (E) An engineer;
- (F) A landscape architect;
- (G) A sports agent;
- (H) An audiologist;
- (I) A chiropractor;
- (J) A dentist;
- (K) An optometrist;
- (L) An osteopathic physician;
- (M) A pharmacist;
- (N) A physician;
- (O) A podiatrist;
- (P) A psychologist;

(Q) A speech pathologist;

(R) A veterinarian;

(S) An attorney.

() "Professional service business" means any person or taxpayer that, as its primary business, offers any one or more of the services for which a professional person may be registered or licensed to offer;

() "Relative or family member" means, with respect to an individual, only:

(A) an ancestor of such individual;

(B) the spouse of such individual;

(C) a lineal descendent of such individual, of such individual's spouse, or of a parent of such individual; or

(D) the spouse of any lineal descendent described in subdivision (C).

For purposes of this subdivision, a legally adopted child of an individual shall be treated as the child of such individual by blood.

SECTION 26. Tennessee Code Annotated, Section 67-4-2004(16), is amended by deleting the language "but does not include sole proprietorships or general partnerships; and" and by inserting immediately after the word "thereunder" the language "; and shall also include any not-for-profit entity that is a professional service business, every natural person doing business as a sole proprietorship and every general partnership".

SECTION 27. Tennessee Code Annotated, Section 67-4-2005, is amended by deleting the language "and/or" and substituting instead the word "or".

SECTION 28. Tennessee Code Annotated, Section 67-4-2006(a), is amended by deleting the language "subsections (b) and (c)" wherever it appears and substituting instead the language "subsections (b), (c), (d) and (e)" and by deleting the language "subsections (b), (c) and (d)" and substituting instead the language "subsections (b), (c), (d) and (e)".

SECTION 29. Tennessee Code Annotated, Section 67-4-2006(a), is further amended by adding the following as new subdivisions:

(7) In the case of a not-for-profit which is a professional service business, "net earnings" is defined as an amount equal to the sum of compensation paid to any professional person employee that exceeds, for any one (1) professional person employee, one hundred thousand dollars (\$100,000) per tax year.

(8) In the case of a not-for-profit entity that is a private foundation, net earnings subject to the excise tax shall equal the sum of compensation paid to any disqualified person or persons that exceeds, for each such disqualified person, one hundred thousand dollars (\$100,000) per tax year.

SECTION 30. Tennessee Code Annotated, Section 67-4-2006(a)(4), is amended by deleting subdivision (B) in its entirety and substituting instead the following:

(B) The amount subject to self-employment taxes distributable or paid to each partner or member, but not in excess of one hundred thousand dollars (\$100,000) for any one partner or member, provided, however, this amount shall not create or increase any net loss; less

SECTION 31. Tennessee Code Annotated, Section 67-4-2006(a)(5), is amended by inserting the language "sole proprietorship or" immediately after the language "In the case of a".

SECTION 32. Tennessee Code Annotated, Section 67-4-2006(b)(1)(E), is amended by inserting after the language "pursuant to 26 U.S.C. § 1212(a)" and before the semicolon ";" the language ", provided, however, in the case of a sole proprietorship, capital losses from property not used in the business shall not be considered for this purpose".

SECTION 33. Tennessee Code Annotated, Section 67-4-2006(b)(2)(E), is amended by inserting after the language "pursuant to 26 U.S.C. § 1211(a)" and before the semicolon ";" the language ", provided, however, in the case of a sole proprietorship, capital losses from property not used in the business shall not be considered for this purpose".

SECTION 34. Tennessee Code Annotated, Section 67-4-2006, is further amended by deleting subsection (d) in its entirety and substituting instead the following subsections:

(d) Except in the case of a financial institution, an insurance company, or an insurance holding company, a taxpayer shall then add to its net earnings, determined in accordance with applicable subsections (a), (b) and (c) of this section, an amount equal to the sum of compensation that exceeds, for any one (1) individual, one hundred thousand dollars (\$100,000) per tax year that is paid either to: (1) any individual who owns more than a one percent (1%) interest in the taxpayer's stock, assets, profits (losses), or voting rights; or (2) a relative or family member of such owner.

(e) In addition, a professional service business shall then add to its net earnings determined in accordance with applicable subsections (a), (b), (c) and (d) of this section, an amount equal to the sum of compensation paid to any professional person employee that exceeds, for any one professional person employee, one hundred thousand dollars (\$100,000) per tax year.

(f) Any amount added under subsection (d) or (e) of this section shall not be reduced by any net loss or loss carryover computed under subsections (a), (b) or (c) of this section. Taxpayers doing business both within and without Tennessee so as to be entitled to apportionment shall apportion the compensation to be added under subsection (d) or (e) of this section using the appropriate apportionment formula provided in this part.

(g) The amount computed under subsections (a), (b), (c), (d) (e) and (f) shall be the taxpayer's net earnings for purposes of the Tennessee excise tax base to which the tax rate is applied as provided in Section 67-4-2007.

SECTION 35. Tennessee Code Annotated, Section 67-4-2007(a), is amended by deleting the period "." at the end of the first sentence and substituting instead the language ";

provided, however, that any not-for-profit entity which is a professional service business shall be subject to the excise tax."

SECTION 36. Tennessee Code Annotated, Section 67-4-2012, is amended by inserting at the end of subsection (b) the following:

In the case of a sole proprietorship, property shall not include any property or portion thereof not actually used in the proprietorship's business.

SECTION 37. Tennessee Code Annotated, Section 67-4-2015, is amended by inserting at the end of subsection (a) the following:

All trades, businesses, farms and professions engaged in by a sole proprietor shall be included on a single return as one business.

SECTION 38. Tennessee Code Annotated, Section 67-4-2104(a), is amended by deleting the language "and/or" and substituting instead the word "or".

SECTION 39. Tennessee Code Annotated, Section 67-4-2105(a), is amended by deleting the period "." at the end of the first sentence and by substituting instead the following language:

; provided, however, that any not-for-profit entity that is a professional service business shall be subject to the franchise tax.

SECTION 40. Tennessee Code Annotated, Section 67-4-2108(a), is amended by adding at the end of the subdivision (1) the following:

In the case of a sole proprietorship, property owned or used shall include only the property, or portion thereof, actually used in the business of such proprietorship, and the personal residence and contiguous acreage of a sole proprietor, a partner, a member or shareholder of a closely held partnership, limited liability company, or corporation, shall not be considered property owned or used in the business of the entity. For purposes of this subsection, "closely held" shall mean an entity that has five (5) or fewer partners, members or shareholders.

SECTION 41. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect the other provisions or applications of the act that can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 42. The provisions of this act shall apply to tax years beginning on or after July 1, 2000, and shall take effect July 1, 2000, the public welfare requiring it.